

# **EXHIBIT 1**

## **Excerpts of Deposition of Dr. Hal Singer Sept. 27, 2017**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

- - -

IN RE: : Civil Action  
: DOCKET NO.  
CUNG LE, NATHAN QUARRY, : 2:15-cv-01045-RFB-  
JON FITCH, BRANDON VERA, : (PAL)  
LUIS JAVIER VAZQUEZ and :  
KYLE KINGSBURG, on behalf : CLASS ACTION  
of themselves and all :  
others similarly :  
situated, :  
:   
Plaintiffs, :  
:   
v. :  
:   
ZUFFA, LLC, d/b/a :  
ULTIMATE FIGHTING :  
CHAMPIONSHIP and UFC, :  
:   
Defendants. :

- - -

Wednesday, September 27, 2017

- - -

Videotaped deposition of  
HAL J. SINGER, Ph.D., taken pursuant to  
notice, was held at the law offices of  
Berger & Montague, P.C., 1622 Locust  
Street, Philadelphia, Pennsylvania 19103,  
beginning at 9:24 AM, on the above date,  
before Constance S. Kent, a Certified  
Court Reporter, Registered Professional  
Reporter, Certified LiveNote Reporter, and  
Notary Public in and for the Commonwealth  
of Pennsylvania.

\* \* \*

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Page 3

1 ALSO PRESENT:  
 2 Augie Urschel  
 3 Economists, Inc.  
 4  
 5 Solange Tran, Video Specialist  
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1 - - -  
 2 I N D E X  
 3 - - -  
 4 Testimony of: HAL SINGER  
 5 By Mr. Isaacson 8

6 - - -  
 7 E X H I B I T S  
 8 - - -  
 9 NO. DESCRIPTION PAGE  
 10 Exhibit Expert Report of Hal J. 6  
 11 Singer-1 Singer, Ph.D.  
 12 Exhibit Errata 6  
 13 Singer-2  
 14 Exhibit Errata II 6  
 15 Singer-3  
 16 Exhibit Excel spreadsheet, 72  
 17 Singer-4 Weight Data for  
 18 Foreclosure Shares  
 19  
 20  
 21  
 22  
 23  
 24

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1 - - -  
 2 D E P O S I T I O N S U P P O R T I N D E X  
 3 - - -  
 4  
 5 Direction to Witness Not to Answer  
 6 Page Line Page Line Page Line  
 7 None  
 8  
 9  
 10 Request for Production of Documents  
 11 Page Line Page Line Page Line  
 12 None  
 13  
 14  
 15 Stipulations  
 16 Page Line Page Line Page Line  
 17 None  
 18  
 19  
 20 Question Marked  
 21 Page Line Page Line Page Line  
 22 None  
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 24

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(Exhibit No. Singer-1, Expert Report of Hal J. Singer, Ph.D., No. Singer-2, Errata, and No. Singer-3, Errata II, were marked for identification.)

THE VIDEOGRAPHER: We are now on the record.

This begins videotape No. 1 in the deposition of Hal J. Singer in the matter of Cung Le versus Zuffa, LLC, in the US District Court for the District of Nevada.

Today is Wednesday, September 27th, 2017, and the time is 9:24 AM.

This deposition is being taken at 1622 Locust Street in Philadelphia, PA 19103 at the request of Boies, Schiller & Flexner, LLP.

The videographer is Sol Tran of Magna Legal Services, and the court reporter is Connie Kent of Magna Legal Services.

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Will counsel and all parties present, please state their appearances and whom they represent.

MR. CRAMER: Eric Cramer from Berger & Montague for the plaintiffs.

MR. DAVIS: Joshua Davis on behalf the Saveri Law Firm for plaintiffs.

MR. SILVERMAN: Dan Silverman, Cohen Milstein Sellers & Toll, on behalf of plaintiffs.

MR. SUTER: Mark Suter, Berger & Montague, on behalf of the plaintiffs.

MR. ISAACSON: Bill Isaacson, Boies, Schiller & Flexner for defendant Zuffa.

MR. WIDNELL: Nicholas Widnell, Boies, Schiller & Flexner, for defendant Zuffa.

MR. NAKAMURA: Brent Nakamura, Boies, Schiller &

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Flexner also for defendant Zuffa.

MR. CRAMER: And on the phone is Augie --

THE WITNESS: Augie Urschel.

MR. CRAMER: Augie Urschel from Economists, Inc.?

THE WITNESS: Correct.

MR. CRAMER: You can spell his name for the court reporter.

THE WITNESS: I don't know. Maybe Augie can spell his last name, Urschel.

MR. URSCHEL: U-R-S-C-H-E-L.

THE WITNESS: Thanks, Augie.

THE VIDEOGRAPHER: All right. Will the court reporter please swear in the witness.

HAL SINGER, having been first duly sworn, was examined and testified as follows:

- - -

E X A M I N A T I O N

- - -

BY MR. ISAACSON:

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Q. So Dr. Singer, for ease of reference, we're putting in front of you Exhibits 1, 2 and 3. Exhibit 1 is your report, Exhibit 2 is your first errata and Exhibit 3 is your second errata. And I'll be asking questions about those two today, and if -- when you want to refer to them, I wanted to make sure you had them in front of you.

A. Okay.

Q. All right. Now, I'm going to ask you hopefully some detailed questions about the various models that you've -- that are included in your report, but let me just ask you some high level questions to make sure I understand what models you have in -- in the report.

Now, for purposes of damages, your first two damages models are benchmark -- benchmarks against Strikeforce and Bellator based on the percentage of revenue paid to fighters; is that correct?

A. That is correct.

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1 Q. It even gets confusing, your  
2 Table of Contents doesn't have a 7A.

3 A. Right. So let me --

4 MR. CRAMER: I think it  
5 means 2.

6 THE WITNESS: Yeah.

7 MR. ISAACSON: 2A?

8 THE WITNESS: Yeah.

9 MR. CRAMER: There's a  
10 section of the report called --

11 under Roman II called Nature of  
12 the Challenged Conduct.

13 MR. ISAACSON: That would  
14 make more sense, yes.

15 THE WITNESS: You want to  
16 strike the V there.

17 BY MR. ISAACSON:

18 Q. All right. So II A is the  
19 horizontal conduct?

20 A. Yes.

21 Q. And so is that the item 3 in  
22 your paragraph 2, the other -- the other  
23 conduct, is it the horizontal conduct?

24 A. No.

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1 Q. Okay. Would it be  
2 everything in No. II that's -- would  
3 your -- would the -- Roman numeral II,  
4 would that section capture the challenged  
5 conduct?

6 A. Roman II captures the  
7 challenged conduct.

8 Q. Okay. Maybe I just got us  
9 another errata.

10 The -- now, the esti- --  
11 your challenged conduct includes  
12 horizontal conduct and vertical conduct.  
13 As I understand it, from what you've said  
14 today, that you are not estimating injury  
15 or damages from the horizontal conduct;  
16 is that right?

17 A. I think I'm not -- I'm not  
18 estimating any -- any impact or damages  
19 that flow entirely through the  
20 horizontal. What -- what's important and  
21 what drives the damages and the impact in  
22 my models are the vertical restraints.  
23 They're doing the -- that is the  
24 mechanism of harm that I'm capturing,

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1 that I'm measuring.

2 Q. All right. The -- you are  
3 measuring an increase in foreclosure due  
4 to the acquisition of rivals by Zuffa; is  
5 that right?

6 MR. CRAMER: Asked and  
7 answered, form.

8 THE WITNESS: Conditional on  
9 Zuffa using exclusive contracts of  
10 a sufficient duration, then yes,  
11 bringing on more fighters and  
12 funneling them through that  
13 mechanism is causing foreclosure  
14 to go up.

15 In contrast, if Zuffa were  
16 not using exclusive contracts of a  
17 sufficient duration and made a  
18 horizontal acquisition, then by my  
19 regression model, at least, there  
20 would be no increase in  
21 foreclosure share and there would  
22 be no anticompetitive effects.

23 In other words, the vertical  
24 restrictions on fighter mobility

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1 are doing -- is the only necessary  
2 condition, it is doing all the --  
3 all the lifting, if you will,  
4 according to my model.

5 BY MR. ISAACSON:

6 Q. Is it the case that you have  
7 not reached an opinion or whether the  
8 acquisition of Zuffa -- of any of Zuffa's  
9 rivals was anticompetitive in the absence  
10 of those fighters subsequently entering  
11 exclusive contracts of 30 or more months?

12 A. So if I'm hearing you right,  
13 if you take away -- if you take away the  
14 vertical restrictions, I'm not offering  
15 an opinion that the horizontal  
16 acquisitions were -- were contributing to  
17 underpayments or damages or impact per my  
18 regression model.

19 Q. And I'm even going a little  
20 broader maybe.

21 A. Okay.

22 Q. Is in the absence of  
23 30-month contracts, you don't have an  
24 opinion about whether any acquisition of

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1 Zuffa of any of its rivals, whether it's  
2 Pride, Strikeforce or Affliction, was  
3 anticompetitive?

4 MR. CRAMER: Objection to  
5 form.

6 THE WITNESS: I don't offer  
7 an opinion on that -- on that  
8 particular aspect. I'll leave it  
9 at that.

10 BY MR. ISAACSON:

11 Q. Fine. You discuss  
12 counter-programming in your report. I  
13 can refer you to that, but if you're  
14 general familiar with the topic.

15 A. Yes.

16 Q. All right. You are -- am I  
17 correct that you are not attributing any  
18 increase in foreclosure percentage to  
19 counter-programming or would you know?

20 A. I'll give you the same  
21 answer I just gave you for the  
22 acquisitions. If you strip away the  
23 restrictions on the fighter mobility, the  
24 exclusive long-term contracts, then the

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1 presence of the counter-programming would  
2 not engender higher foreclosure shares  
3 according to my model, would not generate  
4 the wage effects that -- that my model is  
5 showing.

6 Q. Is -- in the absence of  
7 30-month contracts, in your opinion,  
8 would counter-programming be  
9 anticompetitive?

10 MR. CRAMER: Incomplete  
11 hypothetical.

12 THE WITNESS: It could be,  
13 but I don't -- I don't take -- I  
14 don't take an opinion on that  
15 hypothetical.

16 BY MR. ISAACSON:

17 Q. All right. In the absence  
18 of the 30-month contracts, do you have an  
19 opinion about whether the right to match  
20 provisions in the contracts are  
21 anticompetitive?

22 MR. CRAMER: Objection to  
23 form. Incomprehensible.

24 THE WITNESS: That one --

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1 that one doesn't make sense  
2 because remember the right to  
3 match is one of the contributors  
4 to going over 30 months.

5 BY MR. ISAACSON:

6 Q. Yes. Okay. What about  
7 the -- I will come back to that then.

8 The -- do you consider the  
9 champions clause to be one of the  
10 contributors to going over 30 months?

11 A. I could not attach a  
12 specific duration to the champions clause  
13 except, of course, in the cases in which  
14 it was invoked, so I don't -- I don't --  
15 I don't treat it the same way that I  
16 treat the other provision that lend  
17 themselves to a more natural numerical  
18 accounting of duration, so I require it  
19 in my definition of what constitutes an  
20 exclusionary arrangement, but it is not  
21 adding months to my measure of how long  
22 the contract is.

23 Q. You had reached the opinion  
24 that the champions clause is

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1 anticompetitive -- is an anticompetitive  
2 act?

3 A. I think that the champions  
4 clause, and any of these other things  
5 that we're talking about in conjunction  
6 with what I consider to be the heart of  
7 the -- the driver of the -- the only  
8 necessary condition of the  
9 anticompetitive effects, at least as I  
10 measure them here, is -- is contributing  
11 at the margin to making things worse and  
12 engendering anticompetitive effects.

13 Q. Would the champions  
14 clause -- in the absence of the 30-month  
15 or more contracts, would the champion  
16 clause, in your opinion, be -- be an  
17 anticompetitive act?

18 MR. CRAMER: Incomplete  
19 hypothetical, form.

20 THE WITNESS: I don't  
21 express an opinion on that.

22 BY MR. ISAACSON:

23 Q. The retirement clause, is  
24 that something that causes you to -- that

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1 is part of your analysis of what makes a  
2 contract 30 months or longer?

3 A. No. No, there are few --  
4 the retirement clause and some other  
5 tolling provisions were not counted in --  
6 when I went to add up the durations. In  
7 that sense, my -- my method is  
8 conservative.

9 Q. All right. The -- so the  
10 retirement clause or another tolling  
11 provisions of the contracts, in the  
12 absence of contracts that were 30 months  
13 or longer, you don't have an opinion  
14 about whether they're anticompetitive,  
15 correct?

16 A. On a stand-alone basis, no.  
17 And you keep -- you keep  
18 saying, just so the record is clear, in  
19 the absence of 30 months. Remember it's  
20 exclusive plus duration.

21 Q. Right. Understood.

22 A. Okay.

23 Q. The -- the exclusive  
24 negotiation clause, is that a provision

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1 that you have taken into account in  
2 calculating the 30 months or more?

3 A. Yes.

4 Q. Am I correct that -- if my  
5 colleague will allow me a compound  
6 question to save time -- that items that  
7 you have discussed include preventing the  
8 use of fighter clips when you move to a  
9 new promotion, moving sponsors with you  
10 when you move to a new promotion, and  
11 warning fighters not to sign over their  
12 likenesses to other promoters, those  
13 would -- you would not have an opinion  
14 about whether those actions were  
15 anticompetitive in the absence of  
16 exclusive contracts that were 30 or more  
17 months?

18 A. I think that's fair.

19 Q. Okay. And do you have an  
20 opinion about whether exclusivity  
21 provisions with venues, sponsors or  
22 broadcasters are anticompetitive in the  
23 absence of exclusive contracts of 30 or  
24 more months?

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1 A. I don't have an opinion.

2 Q. Okay. Do you, together with  
3 contracts, inclusive contracts that are  
4 30 or more months, do the -- is it your  
5 opinion that the exclusivity provisions  
6 with venues increase the foreclosure  
7 share of Zuffa?

8 MR. CRAMER: Objection to  
9 form.

10 THE WITNESS: I think that  
11 in conjunction with the primary  
12 restrictions on fighter mobility,  
13 the exclusives on the venues can  
14 be -- can be considered to be  
15 anticompetitive.

16 Whether they contributed to  
17 higher foreclosure shares, I'd --  
18 I'd have think about it. I  
19 imagine one might construct a  
20 story, but I'd have to -- I'd have  
21 to think about it some more.

22 BY MR. ISAACSON:

23 Q. Okay. Today you don't have  
24 an opinion about whether exclusivity

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1 provisions with venues, even taken  
2 together with exclusivity agreements with  
3 fighters of 30 or more months, would  
4 increase the foreclosure share --  
5 increase the foreclosure share?

6 A. Like I said, I can imagine  
7 how they could funnel more fighters into  
8 this net and therefore trigger the  
9 mechanism that's causing the rate  
10 suppression in my -- in my models, but I  
11 don't really have an opinion beyond that.

12 Q. In general, we'll save time  
13 if you tell me whether you have opinions  
14 as opposed to what you imagine.

15 A. Okay.

16 Q. Or could imagine. I don't  
17 mean that as a criticism, I mean that as  
18 constructive.

19 MR. CRAMER: Constructive  
20 criticism.

21 MR. ISAACSON: No, not even  
22 that. A constructive way to get  
23 through the day.

24 MR. CRAMER: Advice.



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1 MR. ISAACSON: Yes.

2 BY MR. ISAACSON:

3 Q. The same question for  
4 exclusive agreements between Zuffa and  
5 sponsors such as Bud Light?

6 A. Sure. This is something  
7 else that's at the margin. Once you  
8 already have the center piece, which is  
9 the exclusive 30-month plus contracts.  
10 At the margin this is contributing to  
11 erecting a barrier to fighter mobility  
12 and therefore generating anticompetitive  
13 effects, and to the extent that it's  
14 funneling more and more fighters through  
15 this mechanism, then that could, as a  
16 matter of theory, be -- be increasing the  
17 foreclosure share.

18 Does that answer --

19 Q. Yes.

20 A. Does that answer the  
21 question?

22 Q. So -- and since all I asked  
23 you was the same question, that really  
24 wasn't helpful. But the -- I take it

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1 that with regards to Zuffa's -- any Zuffa  
2 agreements that are exclusive with  
3 sponsors such as Bud Light, that could,  
4 as a matter of theory, be increasing the  
5 foreclosure share when it's combined with  
6 the exclusive contracts with fighters of  
7 30 or more months?

8 A. It's certainly possible.

9 Q. And is the same true of  
10 exclusive agreements with broadcasters,  
11 that exclusive agreements with cable  
12 companies or other broadcasters could be  
13 increasing Zuffa's foreclosure share when  
14 combined with 30-month -- 30-month plus  
15 exclusive contracts?

16 A. It's possible. I think that  
17 you're starting to get a bit more  
18 tenuous, but anything that's erecting an  
19 impediment to fighter mobility could help  
20 to funnel more fighters through Zuffa's  
21 exclusionary contracts.

22 Q. And does the renewal of the  
23 contract before it comes up by offering  
24 the fighter a higher amount of money for

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1 a second contract, together with 30-month  
2 contracts that are exclusive, does that  
3 tend to increase Zuffa's foreclosure  
4 percentage?

5 MR. CRAMER: Incomplete  
6 hypothetical. Objection to form.

7 THE WITNESS: To the extent  
8 that -- that strategically  
9 delaying the offer of the last  
10 bout until you force the fighter  
11 to sign the next one causes more  
12 people to say inside of this --  
13 this design, then that would --  
14 that would tend to push  
15 foreclosure share upward.

16 BY MR. ISAACSON:

17 Q. Going -- going back to  
18 counter-programming. Would counter-  
19 programming -- in your opinion, does  
20 counter-programming plus exclusive  
21 contracts of 30 or more months, increase  
22 foreclosure share more than just the  
23 contracts -- the exclusive contracts for  
24 30 months?

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1 MR. CRAMER: Asked and  
2 answered.

3 MR. ISAACSON: No, we didn't  
4 go over that.

5 MR. CRAMER: And objection  
6 to form.

7 THE WITNESS: I think that  
8 the story is bit more tenuous  
9 there.

10 BY MR. ISAACSON:

11 Q. Why do you say the story is  
12 more tenuous?

13 A. Because again, what drives  
14 everything in this model are restrictions  
15 on fighter mobility, and I'm thinking of  
16 how you would construct a story on  
17 counter-programming doing that, and I  
18 just would have to -- I would have to  
19 think about that one some more. It's not  
20 obvious to me what the story would be.

21 Q. Well, part of what drives  
22 the increase in foreclosure share is the  
23 increase in Zuffa's market share, right?

24 A. Correct.



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1 Q. So any conduct, such as  
2 counter-programming that increases  
3 Zuffa's market share would increase the  
4 foreclosure share and increase damages?

5 MR. CRAMER: Objection to  
6 form.

7 THE WITNESS: It's a little  
8 more complicated than that because  
9 again you have to -- you have to  
10 assume that the -- the contracts  
11 that they're coming into are  
12 exclusionary.

13 But if you grant me that,  
14 then increases in Zuffa's market  
15 share by, say, making life so  
16 miserable for a rival that they  
17 end up folding and losing all  
18 their fighters to Zuffa, yes, is  
19 going to increase foreclosure  
20 share.

21 BY MR. ISAACSON:

22 Q. Looking at Figure 3, which  
23 is page 115?

24 A. 115?

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1 Q. Yes.

2 A. Okay.

3 Q. You would not be able to  
4 tell me how much of the foreclosure  
5 shares here are attributable to conduct  
6 such as counter-programming or exclusive  
7 contracts with sponsors, and segregate  
8 that out from the 30-year (sic) contracts  
9 that are exclusive?

10 MR. CRAMER: Objection to  
11 form.

12 THE WITNESS: You have to  
13 tell me whether or not we have  
14 exclusive long-term contracts  
15 lurking in the background. That  
16 is the only necessary condition.

17 So if you take those away  
18 and all you give me is counter-  
19 programing, we don't get -- we  
20 don't engender foreclosure.

21 BY MR. ISAACSON:

22 Q. But if you --

23 A. Let me just finish.

24 If you take those away and

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1 give me the threats or take those away  
2 and give me the horizontal, we don't get  
3 the -- we don't get the foreclosure.

4 So there's -- there's only  
5 one necessary element according to this  
6 model --

7 Q. All right.

8 A. -- and that element are the  
9 restrictions of the exclusive --  
10 exclusivity plus duration.

11 Q. So there's one necessary  
12 element for a foreclosure effect, and  
13 that's the 30-month or more exclusive  
14 contracts, correct?

15 A. Yes.

16 Q. Okay. And in terms of the  
17 magnitude of the foreclosure effect,  
18 which is charted on Figure 3, are you  
19 able to segregate out the effect of  
20 30-year (sic) exclusive contracts from  
21 the other conduct that's been alleged  
22 such as counter-programming?

23 MR. CRAMER: Form,  
24 incomprehensible.

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1 THE WITNESS: And I don't  
2 understand -- let me try it this  
3 way, that -- because there's only  
4 one necessary condition, which are  
5 these -- this 30-month exclusive  
6 provision, if you take them out,  
7 the foreclosure goes away. So --  
8 so I would, in a sense, think that  
9 that -- that is -- that is what  
10 matters and everything else is --  
11 is just -- in its presence is  
12 contributing -- to the extent it's  
13 doing anything, it's contributing  
14 through that mechanism.

15 BY MR. ISAACSON:

16 Q. I understand what matters to  
17 you, and you've been very clear about  
18 that. But for example, the foreclosure  
19 percentage for the blue and purple lines  
20 in 2007 are 30 to 40 percent.

21 Do you see that?

22 A. Yeah.

23 Q. All right. And without the  
24 necessary predicate of the 30-year (sic)

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1 restriction in the pay-per-view output of  
2 marquee events between 2010 and 2015?

3 A. Yes. That's what a  
4 pay-per-view event is. I mean, you're  
5 not going to sell a pay-per-view event  
6 unless you have headliner fighters in it.

7 Q. So you're characterizing all  
8 of the pay-per-view events as marquee  
9 events when you say marquee events?

10 A. I think that you might be  
11 able to find counterexamples, a handful  
12 of counterexamples of a pay-per-view that  
13 doesn't feature a headliner, but in  
14 general it would be really hard to sell  
15 it unless it featured a headliner.

16 Q. Right. And did the -- and  
17 if Zuffa -- if a firm decided that it  
18 wanted to move marquee events from  
19 pay-per-view to broadcast, would you  
20 consider that direct evidence of power to  
21 restrict supply?

22 MR. CRAMER: Incomplete  
23 hypothetical, form.

24 THE WITNESS: Well, you're

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1 asking me to assume something that  
2 I understand to be an unprofitable  
3 move.

4 But if -- if your experts  
5 can show evidence that these  
6 marquee events moved one-for-one  
7 from pay-per-view to -- to  
8 television, I'd be happy to  
9 consider such evidence. But I  
10 don't have an opinion on it right  
11 now.

12 Q. Okay.

13 THE VIDEOGRAPHER: Excuse  
14 me, Counsel. We're approaching  
15 ten minutes left on the disk.

16 MR. ISAACSON: I think I'm  
17 done.

18 Give me one minute, but I  
19 think I'm about done for the day.

20 Give us a minute.

21 MR. CRAMER: Let's go off  
22 the record.

23 THE VIDEOGRAPHER: The time  
24 is 4:28 PM. We are going off the

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1 record.

2 (Recess.)

3 THE VIDEOGRAPHER: The time  
4 is 4:31 PM. We have been on the  
5 record for five hours and  
6 36 minutes.

7 MR. CRAMER: All right. We  
8 have no questions.

9 MR. ISAACSON: Thanks.

10 MR. CRAMER: Let's go off  
11 the record.

12 THE VIDEOGRAPHER: All  
13 right. The time is 4:31 PM.

14 This concludes the  
15 deposition and this is the end of  
16 Disk 3.

17 (Witness excused.)


18 (Deposition concluded at  
19 approximately 4:31 PM.)  
20  
21  
22  
23  
24

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1  
2 CERTIFICATE  
3  
4

5 I HEREBY CERTIFY that the  
6 witness was duly sworn by me and that the  
7 deposition is a true record of the  
8 testimony given by the witness.

9 It was requested before  
10 completion of the deposition that the  
11 witness, HAL J. SINGER, Ph.D., have the  
12 opportunity to read and sign the  
13 deposition transcript.

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Constance S. Kent, CCR, RPR,  
Certified Court Reporter  
Registered Professional Reporter  
Certified LiveNote Reporter  
and Notary Public in and for the  
Commonwealth of Pennsylvania  
Dated: October 1, 2017

(The foregoing certification  
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